

Remarks/Arguments

The Applicants have carefully reviewed the Office Action mailed January 29, 2003, and this paper is responsive thereto.

In the specification, the following paragraphs have been amended to correct typographical errors: the paragraph beginning at page 9, line 8; the paragraph beginning at page 11, line 5; and the paragraph beginning at page 11, line 15.

Claims 1-41 remain in this application. Claims 18, 34, 36, and 37 have been withdrawn. Claims 18 and 34 have been withdrawn as the result of an earlier restriction requirement. Claims 36 and 37 have been withdrawn as being drawn to a nonelected group, there being no allowable generic or linking claim.

In the Examiner's action, claims 1-17, 19-33, 35, and 38-41 were rejected. Claims 3, 4, 7, 8, 19, 20, 24, 25, 32, and 35 were rejected under 35 U.S.C. § 112, second paragraph; claims 1-11, 16-17, 19-27, and 38-41 were rejected under 35 U.S.C. § 102(b); and claims 12-15, 28-33, and 35 were rejected under 35 U.S.C. § 103(a). By this response, the Applicants have amended claims 1, 3, 4, 7, 8, 9, 16, 19, 20, 24, 25, 32, 35, and 38. No new matter has been introduced into the application. The claims as amended are believed to be in allowable condition.

The following remarks traverse the remaining grounds for rejection. The Applicants respectfully request reconsideration of the application, withdrawal of the rejections, and allowance of all pending claims.

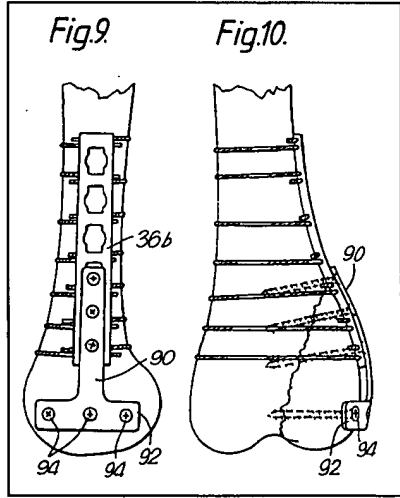
Rejection Under 35 U.S.C. § 112, ¶ 2

Claims 3, 4, 7, 8, 19, 20, 24, 25, 32, and 35 stand rejected under 35 U.S.C. § 112, second paragraph. These claims have been amended to further clarify the scope of the invention. Claims 8, 9, and 25 have also been amended to correct typographical errors. The Applicants believe the application as amended is sufficiently definite under 35 U.S.C. § 112, second paragraph, and thus request withdrawal of this ground for rejection.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-11, 16-17, 19-27, and 38-41 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,665,089 ("Dall et al."). The Applicants traverse the rejection in view of the above amendments and the following remarks.

Dall et al. disclose "[a] cerclage fixation component and a screw fixation component [which] are engageable together to form a composite bone fixation device." (Abstract.) In one embodiment, as seen in Figures 9 and 10, Dall et al. disclose a "many-screw fixation means 90" in the form of a "T-plate insert," which extends beyond a "ladder plate 36b." (Col. 5, lines 6-8.) The T-plate insert "has a cross-piece 92 having screw-receiving openings 94." (Col. 5, lines 8-10.) This T-plate insert is neither a claw nor a claw member. As can be seen in Figures 9 and 10, the T-plate insert 90 of Dall et al. has neither extensions nor hooks. Instead, it is a smooth, T-shaped plate.



Therefore, Dall et al. do not disclose a claw or claw member having at least one extension or hook.

In contrast, all the independent claims of the instant application have the limitation of “claw” or “claw member.” Claims 1, 16, and 38 have been amended to clarify the meaning of

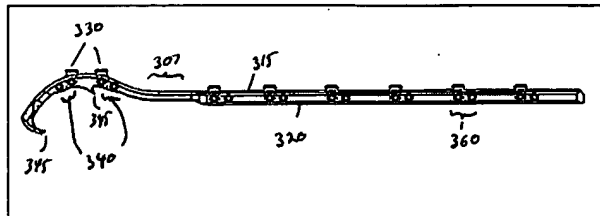


Fig. 4 of the instant application showing claw (345), which has at least one extension or hook.

the terms “claw” and “claw member,” rather than to narrow the scope of these claims. These amendments clarify that the claw or claw member has at least one extension or hook. The structure of the claw or claw member of the

instant invention allows the superior end of the connector to better grasp onto a greater trochanter, which is an improvement on the invention disclosed by Dall et al. In contrast, Dall et al. do not disclose that the T-plate insert of their invention performs such a function. Because Dall et al. do not disclose a claw or claw member having at least one extension or hook, Dall et al. do not disclose each and every limitation of independent claims 1, 16, and 38 of the instant application. Therefore, claims 1, 16, and 38 are not anticipated by Dall et al.

The dependent claims, which depend from and further limit the amended independent claims 1, 16, and 38, are patentably distinct over Dall et al. for at least the same reasons. Claims 2-11 depend, directly or indirectly, from independent claim 1. Claims 17 and 19-27 depend, directly or indirectly, from independent claim 16. Claims 39-41 depend, directly or indirectly, from independent claim 38. Thus, for these and other reasons, claims 1-11, 16-17, 19-27, and 38-41 are not anticipated by Dall et al. Therefore, the Applicants respectfully request withdrawal of this ground for rejection.

Rejection Under 35 U.S.C. § 103(a)

Claims 12-15, 28-33, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dall et al. The Applicants traverse the rejection in view of the above amendments and the following remarks.

Claim 32 has been amended to clarify the meaning of the term “claw member,” rather than to narrow the scope of this claim. This amendment clarifies that the claw member has at least one extension or hook.

There are three requirements to establish a *prima facie* case of obviousness:

- (1) “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings”;
- (2) “there must be a reasonable expectation of success”; and
- (3) “the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

MPEP § 706.02(j). Here, no *prima facie* case of obviousness has been established. There is no evidence of any suggestion or motivation to modify the prior art reference cited, and the reference does not teach or suggest all the claim limitations.

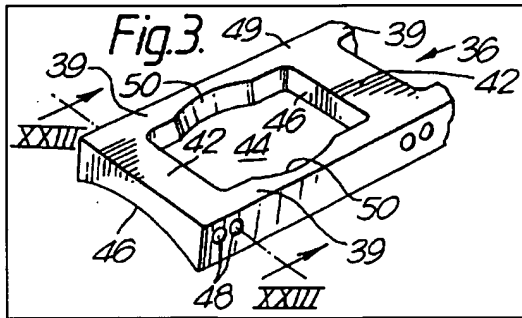


Fig. 3 of Dall et al. showing bridge 42 which is crimped to secure cable passing through holes 48.

Importantly, there is no evidence of any suggestion or motivation to modify the Dall et al. patent to achieve the present invention. The Examiner stated that: "Dall et al. also teach to crimp the cable, in column 4. Therefore, the crimping method of Dall et al. can be considered an equivalent method for securing the cables." The Applicants do not agree that

the crimping method of Dall et al. is equivalent to the way an embodiment of the instant invention secures the cables. Dall et al. teach that to secure the cables, "[e]ach loop of cable is pulled tight and then locked in place by crimping a respective bridge 42, in a generally conventional way." In contrast, an embodiment of the present invention crimps a cable by winding a cable screw 365 into a cable screw slot 370 to affect the size of the cable aperture 360. The crimping contemplated by an embodiment of the instant invention may be easily seen in Figure 3 of U.S. Patent No. 5,415,658 ("Kilpela et al."), which is incorporated by reference into the instant application. The crimping method of Dall et al. is not an equivalent method for securing the cables to that of an embodiment of the instant invention.

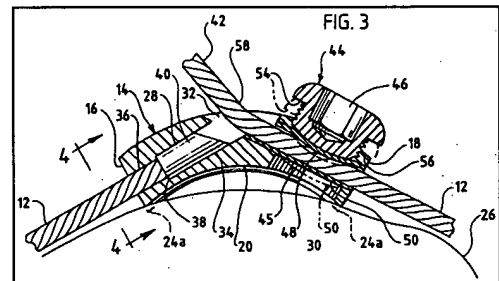


Fig. 3 of Kilpela et al. showing threaded screw 44 in hole 45 to crimp cable 12.

Furthermore, even if the crimping method of Dall et al. were equivalent to the way an embodiment of the instant invention secures the cables, there is no evidence that this equivalence is recognized in the prior art. "[T]o rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant's

disclosure or the mere fact that the components at issue are functional or mechanical equivalents.” MPEP § 2144.06. Thus, even if the crimping disclosed by Dall et al. were equivalent to the way in which an embodiment of the present invention secures the cables, this alleged equivalence alone is not sufficient to establish a *prima facie* case of obviousness. *See In re Scott*, 323 F.2d 1016, 1019, 139 U.S.P.Q. 297, 299 (C.C.P.A. 1963) (“Expedients which are functionally equivalent to each other are not necessarily obvious *in view of* one another.”), *cited in* MPEP § 2144.06. There is no evidence that this alleged equivalence is recognized in the prior art. Therefore, a *prima facie* case of obviousness has not been established.

The Examiner also stated that “it would also be obvious to one with ordinary skill in the art to further provide a driver slot along the lateral side of the superior end and a driver engageable with the driver slot.” However, there is no evidence that one of ordinary skill in the art would be motivated to modify the invention of Dall et al. by adding such a driver slot and a driver engageable with the driver slot. Indeed, Dall et al. make no reference whatsoever to driver slots or drivers, nor do they suggest in any way that it would be desirable to add such features. Absent a suggestion to modify the invention of Dall et al. to arrive at the claimed invention, claims 12-15, 28-33, and 35 are nonobvious.

Moreover, Dall et al. do not teach or suggest all the claim limitations as amended. As discussed above, Dall et al. fail to disclose a claw or claw member having at least one extension or hook, which is a limitation of all the independent claims of the instant application as amended. Also, as the Examiner correctly noted, Dall et al. fail to disclose the following elements:

- (1) at least one cable screw slot along the connector extending from the lateral side to the cable aperture;

- (2) at least one cable screw each engageable with the respective cable screw slot and capable of crimping within the cable aperture;
- (3) a driver slot along the lateral side of the superior end; and
- (4) a driver engageable with the driver slot.

Thus, Dall et al. fail to disclose at least five elements of the relevant claims of the instant application. Because the prior art fails to disclose, teach, or suggest these limitations, the present invention is nonobvious over Dall et al.

For these and other reasons, the Applicants respectfully request withdrawal of this ground for rejection.

Conclusion

All rejections having been addressed, the Applicants respectfully submit that the instant application is in condition for allowance, and respectfully request that a timely Notice of Allowance be issued in this case. It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

Respectfully submitted,

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